

### III. REMARKS

Claims 1, 2, 4-17, and 19-21 have been presented for prosecution and were rejected under 35 USC 102(e) as being anticipated by Radha et al. ("Radha"), US 6,292,512. Applicants respectfully traverse this rejection because Radha fails to teach each and every feature of the claimed invention. For instance, claim 1 recites:

"a system for assigning a variable modulation rate to each stream of encoded video data based on the determined priority, *wherein streams determined as having a relatively low priority are assigned a higher modulation rate than streams determined as having a relatively high priority.*"

As pointed out in the After Final Amendment of 1/26/05, the Applicants believe that the Examiner is confusing the concepts of bit rates and modulation rates. A bit rate refers to the rate at which the encoder compresses the data. A modulation rate refers to the rate at which data is transmitted. Radha only deals with calculating bit rates for BL and EL streams, and does not assign modulation rates to the streams. The Examiner alleges that Figures 6 and 11 "illustrate the concept of such rates at which data is transmitted 43." Applicants respectfully traverse this statement.

Radha does indeed depict a variable bandwidth network 43, meaning that the amount of data it can handle varies. Radha addresses this problem by encoding data at different bit rates, but never teaches or suggests transmitting data at different modulation rates. Thus, in Radha, an image may be encoded at a lower bit rate, e.g., X bits, or be encoded at a higher bit rate, e.g., 2X bits. The number of bits used to encode the image, i.e., the bit rate, has no impact on the modulation rate, i.e., the rate at which the data is transmitted. In the present invention, the

problem is addressed by transmitting data sets at different rates or frequencies. Radha simply does not teach or suggest what it claimed by Applicants.

The Office Action also states that Radha “discloses both encoding and modulation rates in Figure 6.” There is simply no basis for this statement, as Radha is completely void of any discussion or even suggestion of assigning different modulation rates. If such a teaching exists, either explicitly or implicitly, Applicants request that the Examiner specifically point out such teaching and/or explain the rationale for such a conclusion.

The Office Action also states that the Examiner “does not rely on the encoding bit rate assignment of Radha et al to teach such capabilities ...” (i.e., modulation rates). This statement contradicts the entire basis of the rejection in which Radha’s bit rates  $R-R_{BL}$  are explicitly cited by the Examiner as modulation rates. See, e.g., pages 2-3 of the Office Action, in which it is stated that “Radha ... discloses ... wherein a higher modulation rate ( $R-R_{BL}$ ) is assigned to lower priority streams EL and a lower modulation rate ( $R_{BL}$ ) is assigned to higher priority streams BL.”  $R$  and  $R_{BL}$  are explicitly defined as bit rates throughout Radha, and never as modulation rates. Clearly, the bit rates of Radha are being used by the Examiner as the basis for teaching modulation rates, which they do not teach. Given the fact that the cited art fails to teach the features of the claimed invention, Applicants submit that the 35 USC 102(e) rejections should be withdrawn. The remaining claims are believed allowable for the reasons discussed herein, as well as for their own additional features.

Applicants respectfully submit that the application is in condition for allowance. Should the Examiner believe that anything further is necessary to place the application in better condition for allowance, the Examiner is requested to contact Applicants' undersigned attorney at the telephone number listed below.

Respectfully submitted,



Michael F. Hoffman  
Reg. No. 40,019

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Hoffman, Warnick & D'Alessandro LLC  
Three E-Comm Square  
Albany, New York 12207  
(518) 449-0044  
(518) 449-0047 (fax)